

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

PREAMBLE

- | | |
|--|--|
| <p>1. <u>Section Affected</u>
R7-2-307
R7-2-808</p> | <p><u>Rulemaking Action</u>
Amend
Amend</p> |
|--|--|
2. **The statutory authority for the rulemaking, including both the authorizing statute (general and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 15-203(A)
Implementing statute: A.R.S. §§ 15-702, 15-705, and 15-802.01
3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Corinne L. Velasquez, Administrator
Address: State Board of Education
1535 West Jefferson, Room 418
Phoenix, Arizona 85007
Telephone: (602) 542-5057
Fax Number: (602) 542-3046
4. **An explanation of the rule, including the agency's reasons for initiating the rule:**
The State Board of Education is proposing to amend R7-2-307 to delete the requirement that an applicant desiring to take a GED test has not been attending school for six consecutive months preceding application for testing.

The State Board of Education is proposing to amend R7-2-808 to delete language related to home-school students participating in interscholastic athletic competitions. Eligibility requirements for home-schooled students to participate in interscholastic activities will be proposed as a separate rule.
5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.
6. **The preliminary summary of the economic, small business, and consumer impact:**
It is not anticipated that the rule changes will have any economic, small business, or consumer impact.

The deletion of the requirement in R7-2-307 that an individual no longer has to have been withdrawn from school for six consecutive months prior to application for a GED test will allow individuals to qualify for GED testing six months earlier than the current rule allows.

The deletion of the language in R7-2-808 related to home-schooled students will return the rule to its original state, addressing only the issue of eligibility requirements for students participating in extracurricular activities. The Board is not proposing to amend any of the current language of R7-2-808 related to eligibility requirements for students participating in extracurricular activities. Rules related to home-schooled students participating in interscholastic activities will be promulgated under a separate rulemaking process.

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7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Corinne L. Velasquez, Administrator
Address: State Board of Education
1535 West Jefferson, Room 418
Phoenix, Arizona 85007
Telephone: (602) 542-5057
Fax Number: (602) 542-3046

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

An oral proceeding on the proposed rulemaking is scheduled as follows:

Date: September 22, 1997
Time: 1:30 p.m.
Location: State Board of Education
1535 West Jefferson, Room 417
Phoenix, Arizona 85007

Written comments may be submitted on or before 5 p.m. on September 15, 1997, to the contact person listed above.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

10. Incorporations by reference and their location in the rules:

None.

11. The full text of the rule follows:

TITLE 7. EDUCATION

CHAPTER 19. STATE BOARD OF EDUCATION

**ARTICLE 3. CURRICULUM REQUIREMENTS AND
SPECIAL PROGRAMS**

Section
R7-2-307. High School Equivalency Certificates

ARTICLE 8. COMPLIANCE

Section
R7-2-808. Pupil Participation in Extracurricular Activities

**ARTICLE 3. CURRICULUM REQUIREMENTS AND
SPECIAL PROGRAMS**

R7-2-307. High School Equivalency Certificates

A. No change.

1. No change.
2. No change.

B. No change.

1. No change.
2. No change.
3. No change.
4. No change.
5. No change.

C. Arizona GED Testing Centers shall administer GED tests to applicants who meet the following criteria:

1. The applicant is at least 16 years of age, has positive identification, proof of age, has not been attending school for six consecutive months preceding application for testing as verified by letter from last school attended, and, if the applicant is between 16 years and 18 years of age, he/she must present a signed statement of parental consent from his/her parent or legal guardian; or

2. The applicant is 18 years of age, has positive identification and proof of age.
3. The applicant has not received a high school diploma or high school equivalency certificate.
4. The applicant has paid the appropriate fee not to exceed \$15 for the entire GED battery of five tests, or \$3 per test for each test that is retaken.

D. No change.

1. No change.
2. No change.
 - a. No change.
 - b. No change.
 - c. No change.
 - d. No change.
 - e. No change.
 - f. No change.
 - g. No change.
 - h. No change.
3. No change.
4. No change.
5. No change.
6. No change.
7. No change.
 - a. No change.
 - b. No change.
 - c. No change.
 - d. No change.
 - e. No change.
 - f. No change.
 - g. No change.
 - i. No change.
 - ii. No change.

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- iii. No change.
- iv. No change.
- v. No change.
- vi. No change.
- vii. No change.
- E. No change.
 - 1. No change.
 - 2. No change.
- F. No change.
- G. No change.
 - 1. No change.
 - 2. No change.
 - 3. No change.
 - 4. No change.
 - 5. No change.

ARTICLE 8. COMPLIANCE

R7-2-808. Pupil Participation in Extracurricular Activities

- A.** The following standards are effective for district school students in grade 6, if part of a middle school, and or in grades 7 through 12 and home school students in grades 7 through 12. Subject to meeting the eligibility requirements specified in this rule and provided that all students meet the requirements of this rule and other district eligibility requirements, a district school student shall be allowed to participate in extracurricular activities and a home school student shall be allowed to participate in interscholastic athletic competition. If a student reaches the age of 15 on or before September 1 of the school year, the student shall not be eligible to participate at the 7th and 8th grade levels. If a student reaches the age of 19 or before September 1 of the school year, the student shall not be eligible to participate at the 9th through 12th grade levels.
- 1.B. Definitions. Extracurricular activities are:**
- a.1. Extracurricular activities are: All interscholastic activities which are of a competitive nature and involve more than 1 school where a championship, winner, or rating is determined; and all those endeavors of a continuous and ongoing nature for which no credit is earned in meeting graduation or promotional requirements and are organized, planned, and sponsored by the district consistent with district policy.
 - b. Activities which are an integral part of a credit class shall be excepted from the rule.
- 2. Interscholastic Athletic Competition is:** All interscholastic sports activities which are of a competitive nature, involve more than 1 school where a championship, winner, or rating is determined and involve physical exercise and established game rules.
- 3. Attendance Area means:** The geographic attendance areas established by the district for attendance at a school.
- 2.C. Eligibility Academic eligibility requirements and ineligibility.**
- a.1. Eligibility. To be eligible to participate in extracurricular activities and interscholastic athletic competition, a student shall be required to:
 - i.a. Earn a passing grade in each course or subject in which the student is enrolled and instructed. Passing grade shall be determined on a cumulative basis, from the beginning on instruction to the recording of the final grade for the course.
 - ii.b. Maintain satisfactory progress toward advancement, promotion, or graduation.
 - b.2. Ineligibility. When it is determined that a student has failed to meet the requirements specified for eligibility, the student shall be declared ineligible to partici-

pate in extracurricular activities and shall remain ineligible until the requirements of eligibility are met.

- i. The governing board shall establish the criteria for a passing grade and satisfactory progress toward promotion or graduation, taking into account the needs of children placed in special education programs pursuant to R7-2-401 et seq. Passing grades shall be determined on a cumulative basis, from the beginning of instruction to the recording of a final grade for the course.
- ii.3. Every 9 weeks or less. At least every 9 weeks, or more frequently as determined by the governing board, district personnel shall check review the progress of students to determine their eligibility status. If a student is declared ineligible, the student shall remain ineligible until a subsequent check is performed the next reporting and it is determined that the student meets the eligibility requirements specified in subsection (2)(a) (C)(4).
- a. The governing board shall establish the criteria for a passing grade and satisfactory progress toward promotion or graduation for district students, taking into account the needs of children placed in special education programs pursuant to R7-2-401 et seq.
- b. The individual providing the primary instruction of a home school student shall submit a notarized affidavit which provides:
 - i. The affidavit is being submitted under penalty of perjury;
 - ii. Whether the student is receiving a passing grade in each course or subject being taught;
 - iii. Whether the student is maintaining satisfactory progress towards advancement, promotion, or graduation;
 - iv. If a student has been enrolled in a district as a full-time student, the student shall not be eligible to participate in interscholastic athletic competition as a home-schooled student until an Affidavit of Intent to Home School has been filed with the County Superintendent and 30 days has elapsed since the filing of the affidavit.
- 3.D.** Each governing board shall adopt a policy and implement a program pursuant to that policy to provide.
 - a.1. Oral or written preliminary notice to all district students and their parents or guardian of pending ineligibility;
 - b.2. Written notice to students and their parents or guardians when ineligibility has been determined;
 - c.3. Educational support services to district students declared ineligible because of this rule, as well as those notified of pending ineligibility;
- 4. Oral or written preliminary notice to all students and their parents or guardian of the time frames related to participation in extracurricular activities and interscholastic athletic competition. Written notice shall be made available within the school's administrative office to all students and their parents or guardians.
- 5. Written notice made available to all students, their parents, or guardians at the district's administrative office regarding policies related to transportation, insurance, physical condition, fees, uniforms, calendars, practice requirements, and schedules and acceptance on a team.

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~~These policies are to be made available within the school's administrative office to all students and their parents or guardians.~~

6. ~~That all policies related to interscholastic athletic competition do not impose additional requirements on home-schooled students than are imposed on district students.~~
- E. ~~All students shall register and pay fees established by the district for participation in interscholastic athletic competition or extracurricular activities and meet all qualifications, responsibilities, and standards of behavior and performance, including those related to demonstration of skill and proficiency, prac-~~

~~tice requirements, physical prerequisites, and acceptance onto the team, squad, or group.~~

- E. ~~District students may participate in interscholastic athletic competition and extracurricular activities in only the school in which the student is enrolled. Home school students may participate in interscholastic athletic competition at a school only if the student actually resides within the boundaries of the attendance area of a school. Home school students are not eligible for open enrollment pursuant to A.R.S. § 15-816 through 816.06~~

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ARIZONA LONG-TERM CARE SYSTEM**

PREAMBLE

- | | |
|-----------------------------------|---------------------------------|
| 1. <u>Section Affected</u> | <u>Rulemaking Action</u> |
| Article 9 | Amend |
| R9-28-901 | Amend |
| R9-28-902 | Amend |
| R9-28-906 | Amend |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 36-2932(P)
Implementing statute: A.R.S. §§ 36-2915, 36-2935, 36-2946, and 36-2956
- 3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Cheri Tomlinson
Address: AHCCCS
801 East Jefferson, MD4200
Phoenix, Arizona 85034
Telephone: (602) 417-4198
Fax Number: (602) 256-6756
- 4. An explanation of the rule, including the agency's reasons for initiating the rule:**
Changes are made as a result of a 5-year-review report to 3 rules in Article 9 pertaining to 1st- and 3rd-party liability and coordination of benefits, monitoring, compliance, and recoveries. The changes are designed to:
- Comply with changes made to federal law, and
 - Align ALTCS rules with AHCCCS acute care rules and make the rules more user friendly.
- 5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.
- 6. The preliminary summary of the economic, small business, and consumer impact:**
There may be a minimal impact on AHCCCS for costs that AHCCCS decides to waive or compromise when the recovery of funds would cause an undue hardship to a member's or eligible person's surviving heirs.

The following parties will benefit from the changes which align ALTCS rules with AHCCCS acute care rules and make the rules more concise and understandable:
- AHCCCS,
 - The AHCCCS TPL Contractor,
 - ALTCS Program Contractors,
 - ALTCS Providers, and
 - The surviving heirs of ALTCS members or eligible persons.

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The following entities were considered but will not be affected by the changes:

- The larger business community,
- The general public and Arizona taxpayers,
- Other governmental agencies,
- Political subdivisions, and
- American Indian tribes.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Cheri Tomlinson
Address: AHCCCS
801 East Jefferson, MD4200
Phoenix, AZ 85034
Telephone: (602) 417-4198
Fax: (602) 256-6756

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: September 3, 1997
Time: 9 a.m.
Location: AHCCCS Administration, Hearing Room A
701 East Jefferson, Second Floor
Phoenix, AZ 85034
Nature: Public Hearing

A person may submit written comments on the proposed rules not later than 5 p.m., September 3, 1997, to the person listed in #7 above.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.

10. Incorporations by reference and their location in the rules:
42 CFR 433.36, November 3, 1982, incorporated in R9-28-906.

11. The full text of the rule follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ARIZONA LONG-TERM CARE SYSTEM**

**ARTICLE 9. 1ST- AND 3RD-PARTY THIRD-PARTY
LIABILITY AND RECOVERIES**

Section

- R9-28-901. 1st- and 3rd-party Third-party Liability and Coordination of Benefits
R9-28-902. 1st- and 3rd-party Third-party Liability Monitoring and Compliance
R9-28-906. Recoveries

**ARTICLE 9. 1ST- AND 3RD-PARTY THIRD-PARTY
LIABILITY AND RECOVERIES**

R9-28-901. 1st- and 3rd-party Third-party Liability and Coordination of Benefits

General Provisions. The provisions in A.A.C. R9-22-1001 apply to this Section.

- A.** Payor of last resort. The ALTCS shall be used as a source of payment for covered services only after all other sources of payment for members and eligible persons receiving care have been used. The ALTCS shall act as a payor of last resort unless specifically prohibited by applicable state or federal law.

- B.** Reasonable efforts. The Administration, program contractors, providers, and noncontracting providers, eligible non-enrolled persons and members shall take reasonable measures to identify and receive from legally liable third-party resources.
- C.** Member participation. It is the member's or eligible person's responsibility to cooperate, insofar as possible, to identify potentially liable third parties and to assist the program contractor, provider or noncontracting provider in pursuing any third party who may be liable to pay for ALTCS covered care and services.
- D.** Collections. Program contractors, providers and noncontracting providers are responsible for identifying and pursuing collection of reimbursement from all probable sources of third-party liability, except for underinsured and uninsured motorist insurers, third-party liability insurers and tort-feasors. Program contractors are responsible for identifying and notifying the Administration in accordance with subsection (D) of R9-28-902 of the potential liability of underinsured and uninsured motorist insurers, third-party liability insurers and tort-feasors. The Administration shall coordinate and pursue collection from underinsured and uninsured motorist insurers, third-party

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liability insurers and tort-feasors in cases of probable third-party liability. Program contractors shall cooperate with the Administration in its collection efforts.

E. ~~Duplication of benefits. Payments made for covered services by ALTCS shall not duplicate benefits otherwise available from probable third-party payors. Payments by ALTCS for covered services may supplement payment or benefits from third parties to the extent authorized by this Chapter or applicable contracts.~~

E. ~~Recovery for program contractors. A program contractor may retain up to 100% of its third-party collections provided that:~~

- ~~1. Total payments received do not exceed the total amount of the program contractor's financial liability for the member;~~
- ~~2. ALTCS fee-for-service, deferred liability and reinsurance benefits have not duplicated the recovery;~~
- ~~3. Such recovery is not prohibited by federal or state law;~~
- ~~4. The payments collected are reflected in capitation rates. The Administration may require a program contractor to reimburse the Administration up to 100% of third-party payments collected which are not reflected in capitation rates.~~

G. ~~Recovery for the Administration. The Administration may retain its third-party collections up to 100% of capitation payments, fee-for-service and reinsurance payments. The funds collected shall be deposited in the ALTCS fund.~~

R9-28-902. 1st- and 3rd-party Third-party Liability Monitoring and Compliance
General Provisions. The provisions in A.A.C. R9-22-1002 apply to this Section.

A. ~~Categories of third-party liability. The Administration shall monitor third-party payments to a program contractor, provider or noncontracting provider, which may include payments by or for:~~

- ~~1. Workmen's compensation;~~
- ~~2. Disability insurance;~~
- ~~3. A hospital and medical service corporation;~~
- ~~4. A health care services organization or other health or medical or insurance plan;~~
- ~~5. Standard health insurance;~~
- ~~6. Medicare and other governmental payors;~~
- ~~7. Medical payments insurance for accidents;~~
- ~~8. Underinsured or uninsured motorist insurance, third-party liability insurance or tort-feasors.~~

B. ~~Monitoring. The Administration shall determine whether a program contractor, provider or noncontracting provider is in compliance with the requirements set forth in this Article by inspecting source documents for:~~

- ~~1. Verifiability and reliability;~~
- ~~2. Appropriateness of recovery attempt;~~
- ~~3. Timeliness of billing;~~
- ~~4. Accounting for reimbursements;~~
- ~~5. Auditing of receipts;~~
- ~~6. Other monitoring deemed necessary by the Administration.~~

C. ~~Notification for perfection, recording and assignment of ALTCS liens:~~

- ~~1. County requirements. The county of residence shall notify the Administration pursuant to subsection (D) not later than five days after it files a lien pursuant to A.R.S. § 11-291 for charges for hospital, medical or ALTCS services provided to an injured person who is determined ALTCS eligible, so that the Administration may preserve its lien rights pursuant to A.R.S. § 36-2915, A.R.S. § 36-2935, or A.R.S. § 36-2956 or its claim rights pursuant to A.R.S. § 36-2935.~~

~~2. Hospital requirements. Hospitals providing emergency or urgent medical services to an eligible non-enrolled person or member for an injury or condition resulting from circumstances reflecting the probable liability of a third party shall notify the Administration pursuant to subsection (D) not later than 15 days after discharge. A hospital may also satisfy the requirement of this Paragraph by mailing to the Administration a copy of the lien it proposes to record or has recorded pursuant to A.R.S. § 33-932 not later than 15 days after discharge.~~

~~3. Program contractors, provider and noncontracting provider requirement. Program contractors, providers and noncontracting providers other than hospitals rendering medical services to an eligible non-enrolled person or member for an injury or condition resulting from circumstances reflecting the probable liability of a third party shall notify the Administration pursuant to subsection (D) not later than five days after providing such services.~~

D. ~~Notice requirements. Notice requirements shall be satisfied when all of the following information is mailed to the Administration:~~

- ~~1. Name of program contractor, provider or noncontracting provider;~~
- ~~2. Address of program contractor, provider or noncontracting provider;~~
- ~~3. Name of patient;~~
- ~~4. Patient's social security number or ALTCS identification number;~~
- ~~5. Address of patient;~~
- ~~6. Date of patient's admission;~~
- ~~7. Amount estimated to be due for care of patient;~~
- ~~8. Date of patient's discharge;~~
- ~~9. Name of county in which injuries were sustained; and~~
- ~~10. Names and addresses of all persons, firms or corporations and their insurance carriers claimed by the patient or the patient's legal representative to be liable for damages.~~

E. ~~Sanctions. Program contractors, providers or noncontracting providers who fail to meet the notice requirements set forth in this Section shall forfeit their right to reimbursement, including fee-for-service, deferred liability and reinsurance, from the Administration for services provided to eligible non-enrolled persons or members, unless the program contractor, provider, or noncontracting provider demonstrates good cause for such failure.~~

R9-28-906. Recoveries

A. The Administration may recover funds paid for ALTCS benefits including: capitation payments, Medicare Parts A and B premium payments, coinsurance, deductibles, fee-for-service, and any other payments made by the Administration for a member or eligible person from:

1. The estate of the member or eligible person who was 55 years of age or older when the member or eligible person received benefits; or
2. The estate or the property of the member or eligible person according to A.R.S. §§ 36-2935 and 36-2956 and 42 CFR 433.36, November 3, 1982, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.

B. The Administration may waive or compromise the recovery of funds when the recovery would cause an undue hardship to the surviving heir of the member or eligible person. In making the undue hardship decision, the Administration will consider the following:

1. When estate assets include real property or both real and personal property. There is property in the estate, and the

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property is listed as residential property by the Arizona Department of Revenue or County Assessor's Office, and the heir:

- a. Owns a business that is located at the residential property, and
 - i. The business was in operation at the residential property for at least 12 months preceding the death of the member or eligible person,
 - ii. The business provides more than 50% of the heir's livelihood, and
 - iii. The recovery of the property would result in the heir to the estate losing the heir's means of livelihood; or
- b. Currently resides in the residence, and
 - i. Resided there at the time of the member's or eligible person's death,
 - ii. Made the residence his or her primary residence for the 12 months immediately preceding the death of the member or eligible person, and
 - iii. Owns no other residence.

2. When the estate assets contain personal property only.

- a. The heir's annual gross income for the household size is within 100% of the Federal Poverty Level (FPL). New sources of income (for example, employment, Social Security, etc.), which may not have yet been received, will be included in determining the household's annual gross income; and
- b. The heir does not own a home, land, or other real property.

C. If the heir's circumstances meet the conditions in subsection (B)(1) or (B)(2), the Administration shall determine on a case-

by-case basis, to what extent, if any, the claim will be compromised or waived. Factors in making this determination include:

1. Financial and medical hardship to the heir if a compromise or waiver is not granted,
2. Income of the heir and whether the heir's household's gross annual income is within 100% of the FPL,
3. Resources of the surviving heir,
4. Value and type of assets in the estate (real and personal),
5. Amount of the Administration's claim against the estate, and
6. Whether other creditors have filed claims against the estate or have foreclosed on the property.

D. A promissory note and deed of trust may be required in cases where a claim against property is compromised or waived, and the heir resides in the residence, maintains a business at the residence, or otherwise relies on the residence for support and means of livelihood. The executor or heir of the estate shall secure the promissory note and deed of trust and provide certified copies to the Administration within 30 days of receipt from the Administration of the notice of the undue hardship decision. The heir shall bear the costs for securing these documents.

The Administration may recover funds for ALTCS benefits paid for an individual from:

1. The estate of a member who was 65 years of age or older when he received benefits; or
2. The estate or the property of a member pursuant to A.R.S. §§ 36-2935 and 36-2956 and 42 C.F.R. 433.36, incorporated by reference herein and on file with the Office of the Secretary of State.